1959 was not in force at the time of the coming into force of the Courts Ordinance, 1948 the High Court has undoubtedly jurisdiction to deal with all matters relating to the rights of the parties who come before it, and there is no provision in any law which I can find, and no law has been referred to me, which excludes the jurisdiction of this court. I also find that section 4 of the Courts of Judicature Act, 1964 provides that the provisions of the said Act must prevail in the event of any inconsistency or conflict between that Act and the provisions of any other written law other than the Constitution in force at the commencement of the Courts of Judicature Act 1964.

I consequently, hold that this court has jurisdiction to try the present suit.

Objection dismissed.

Solicitors: *Ee Yew Lin & Son; Chelvam & Co.*

NAFSIAH v. ABDUL MAJID (No. 2)

[O.C.J. (Sharma J.) May 6, 1969]
[Malacca — Civil Suit No. 48 of 1965]

Family Law — Marriage — Breach of promise — Muslims — Seduction as aggravation of damages — Validity of promise to marry by married man.

Muslim Law — Marriage — Breach of promise — Man already married — Personal law.

The plaintiff brought an action for damages for breach of promise to marry, contending that damages should be aggravated by reason of the fact that she had been seduced by the defendant. It was urged upon the court that because the plaintiff knew that the defendant was already married, even if the defendant had made any promise to marry the plaintiff such promise was void *ab initio.*

Held: (1) the plaintiff's knowledge that the defendant was already married did not invalidate the promise as the defendant was, under his own personal law, entitled to more than one wife;

(2) there was sufficient evidence that the defendant had promised to marry the plaintiff. Damages was assessed at $1,200.

CIVIL SUIT.

Ee Yew Lin for the plaintiff.

G.R.T. Chelvam for the defendant.

Sharma J. (delivering oral judgment): In this case the plaintiff claims damages for breach of contract of marriage. According to her statement of claim the promise was made by the defendant first on the 19th of August, 1963 and this promise was subsequently reduced into writing by a document produced as Exhibit A1 (A2 is a certified translation in English thereof). The plaintiff also alleges that she was seduced by the defendant and as a result of such seduction she became pregnant and a son was born to her through the defendant on 29th July, 1964. The defendant in his defence denies ever having made any promise to marry her and ever having seduced her or being the lawful father of the child which was born to her. The defence alleges that the agreement dated 30th June, 1964 (Exhibit A1) is void *ab initio* for the defendant was forced to sign the same under duress.

It is admitted that the parties profess the Muslim religion. I have heard the evidence both for the plaintiff and the defendant. The onus of duress lay upon the defendant. In the light of the evidence which was produced Mr. Chelvam who appeared on behalf of the defendant informed the court, and I think very rightly, that he was not relying upon the plea of duress. I find it very difficult in the light of the documents which have been produced by the plaintiff, and which admittedly have been signed by the defendant, to believe that the defendant was forced into signing the same. I consequently disbelieve the evidence of the defendant and find that he voluntarily and willingly executed Exhibit A1 and wrote all the subsequent letters of his own free will. I further find no reason whatsoever to disbelieve Haji Thamby bin Haji Abdullah (P.W.3) who appears to be an independent witness.

The fact remains that a child was born to the plaintiff on 29th July, 1964. I have not been asked to determine the paternity of the child. The suit is a simple suit for damages for breach of contract of marriage. I do not propose to deal with the question of the paternity of the child or the question of maintenance which the said child may be entitled to. These reliefs have not been claimed in this suit and I do not propose to make any order or observation in respect thereof. The parties are quite at liberty to file separate proceedings in respect of such reliefs.

At the start of the proceedings yesterday I had asked counsel for the plaintiff whether he was basing the plaintiff's claim on a breach of promise of marriage alone and he informed me that his claim was based not only on a breach of promise of marriage but also for damages arising out of seduction of the plaintiff by the defendant. As I understand it, the action for damages for seduction is an action for the consequential damage arising from the loss of service resulting from the act complained of. Such an action will fail unless some loss of service can be shown. Such an action only purports to give recompense for the loss of service and is generally brought by the parent for injury to his or her child. In this particular case, however, the action is brought by the

plaintiff herself who says that she was seduced by the defendant and no question of any loss of service to the parents of the plaintiff arises. I repeated the question again to Mr. Ee (counsel for the plaintiff) at the close of the evidence today and his stand, and I think rightly, was that he was not claiming damages for seduction under a separate head but was asking for aggravation of damages because of seduction.

The plaintiff is a Muslim woman who fully realises that the defendant could have married her and divorced her at any time thereafter. She told the court that as a result of the birth which she gave to the child and which she maintains, is the child of the defendant, she did not suffer any handicap in marrying again and that she would not experience any difficulty even after her divorce from Majid, an Indian Muslim, whom she married after the institution of the present suit.

I need not go through the evidence in detail but I find as a fact that a promise was made by the defendant that he would marry the plaintiff. The defendant, however, denies this. I am not prepared to believe the defendant in view of the overwhelming documentary evidence which I find in this case. I am, therefore, of the view that the defendant is guilty of a breach of promise to marry the plaintiff. Considering the social conditions in this country and the habits and customs of the people, I am of the view that the plaintiff was very likely to have suffered humiliation and disgrace as a result of her carrying a child and giving birth to the child without being married to the man who was responsible for it.

My attention was drawn to a passage in *Chitty* on Contracts (21st edn. Vol. I s. 908) and it was urged upon the court that because the plaintiff knew that the defendant was already married, even if the defendant had made any promise to marry the plaintiff, such a promise or agreement in such circumstances was void *ab initio*. This might very well be true of a society in which marriage is a monogamous institution. The parties in the present suit, however, are governed by Muslim law and the defendant is under his own personal law entitled to more than one wife and I consequently hold that such an argument does not apply to the conditions which prevail in this country and more particularly to males professing the Muslim faith.

Having found that the defendant had promised to marry the plaintiff and that the defendant had committed a breach of such promise I assess the damages at the sum of $1,200. I have heard the counsel for both parties on the question of costs. This is an action purely for damages arising out of a breach of promise to marry. I see no difference between this action and any other action for damages for breach of contract. As I have already awarded only a sum of $1,200, I am of the view that the provisions of O. 65 r. 12B of the Rules of the Supreme Court come into play and the plaintiff is entitled only to costs in accordance with the scale prescribed under the Rules of the Subordinate Courts.

Judgment for the plaintiff.

Solicitors: *Ee Yew Lin & Co.; Chelvam & Co.*

SUBRAMANIAN CHETTIAR & ORS. v. J.C. CHANG LTD.

[F.C. (Azmi L.P., Gill F.J. and Lee Han Hoe J.) May 26, 1969]

[Kuala Lumpur—Federal Court Civil Appeal No. X.67 of 1968]

Contract — Land — Option to purchase — Provision for extension of option — Whether option properly exercised — Whether meaning of "not being approved" is synonymous with "refusal".

The appellants who were the owners of lands in Kuala Lumpur had in consideration of the sum of $1 paid to them by the respondent, granted to the respondent an option for a period of four months from the date of the agreement to purchase the said lands. It was agreed that as from the date of the option the appellants were to give the respondent every assistance to obtain from the planning authorities the permissions and approvals for the development of the lands and it was provided that if the applications for permission and approval were not approved within the period of the option it would be further extended for a further period of eight months. The application for development of the lands put up by the respondent was refused on the ground that the application was for commercial development whereas the land was zoned as open residential development. The respondent then gave further instructions for a further application with amended plans for re-zoning of the option lands for commercial purposes. On July 1, 1966 the third appellant gave notice to the respondent of termination of the option agreement. The respondent entered a private caveat against the lands alleging that the period for completing the sale was up to January 2, 1967. In December 1967 the respondent made a deposit of 10% of the purchase price with the appellants solicitors. At the trial the learned judge came to the conclusion that the exercise of the option was not contingent on the planning approval, that "refusal" of the original application being synonymous with "being not approved" gave the respondent a further period of eight months within which to exercise the option and that since the option was exercised and deposit of 10% of the purchase price made within that period the agreement was binding on the parties. Accordingly he gave judgment for the respondent. The appellants appealed.

Held, allowing the appeal: (1) the option is a conditional contract and so long as the option is in force it could be exercised by the holder;

(2) in this case bearing in mind the object and intent of the option agreement and looking at it as a whole and considering it in its general context, the words "not being approved" were not synonymous with "refusal", so that if the original application was